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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/506,294
Filing Date: August 31, 2004
Appellant(s): LENKL, JOHANNES

Joseph Grass
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 23, 2008 appealing from the Office action mailed July 2, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-6, 10-20, 22-24, and 26.

Claim 25 is allowed.

Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7 and 21 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on August 26, 2008 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 13, 15, 18, and 26 are no longer rejected under 35 U.S.C. 102(b) as being anticipated by Becker.

NEW GROUND(S) OF REJECTION

Claims 18 and 26 are now rejected under 35 U.S.C. 103 as being unpatentable over Von Hofe in view of Becker as explained in section (9) below.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-6, 10-20, 22-24, and 26-31 appears on pages 32-34 of the Appendix to the appellant's brief. The minor errors are as follows: Claim 6, line 3, "releaseably" was replaced with 'releasably' in the after final amendment.

(8) Evidence Relied Upon

3,888,725	FRENCH	06-1975
6,182,957	BECKER	02-2001
2,492,908	VON HOFE	12-1949
5,885,406	TIEFEL	03-1999
3,377,096	WOOD	04-1968
5,024,574	WILSON et al.	06-1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 13, 16-17, 19-20, 22-23, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by French (US Patent No. 3,888,725).

Regarding claim 1, French discloses an applicator head for a device which is in communication with an air suction source and also includes an applicator surface, 67, with at least two perforatable, weak locations being recesses, 101, having a bottom, 115, which can be perforated, 117, by a suitable tool to provide holes in a desired configuration. (Col. 5, lines 32-36, 54-67, Col. 6, lines 18-25).

As to claims 2, 3, and 5, Figures 3 and 5 show how the weak locations are regularly arranged over the entire applicator surface in rows and columns.

As to claim 4, Figure 3 shows grooves extending to the applicator surface.

As to claims 6 and 13, French further shows an applicator pad, 31, coupled to the applicator surface. (See Figure 4) Also included is a mounting frame releasably connected to the applicator pad (See Figure 2).

As to claim 16, it appears that the weak locations could be perforated by hand, such as using a hand drill, which would have a handle.

As to claim 17, the carrier plate is releasably connected to the air suction force through tubes, 103.

As to claims 19-20 and 28, the formation in Figures 3 and 5 show a pattern of closely spaced dots that amounts to a raster grid with rows and columns.

As to claim 22, the applicator plate includes an applicator surface in French.

As to claim 23, the carrier plate and applicator plate in Figure 4 includes a space in between.

As to claim 29, the applicator plate of French is in combination with an applicator head.

As to claims 30-31, the method of making the applicator plate of French comprises: providing an applicator plate having spaced perforatable weak areas; perforating only selected ones of the weak areas of the plate; and assembling the applicator plate onto a label applicator head.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Becker (US Patent No. 6,182,957 B1).

Regarding claim 1, Becker discloses an apparatus for holding a flexible product which is in communication with an air suction source and also includes an applicator surface with at least two perforatable, weak locations being recesses having a bottom

which can be perforated by a tool which is made of a harder material than the plate to provide holes through the plate in a desired configuration.

As to claims 2 and 3, Figure 3 shows how the weak locations are regularly arranged over the entire applicator surface.

As to claims 4 and 5, a second plate (16) is fastened to the flat plate (14) and provides for columns and grooves which are provided between at least two columns of the weak locations as shown in Figure 1. The grooves extend in parallel and at equidistant spacing to each other.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 10, 13, 15-19, 20, 22-23 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe (US Patent No. 2,492,908). In view of Becker (US Patent No. 6,182,957).

Regarding claim 1, Von Hofe discloses an applicator head for a device which is in communication with an air suction source and also includes at least two perforatable, weak locations on the surface which can be selectively perforated to provide through holes through the plate in a desired configuration. The applicator in Von Hofe includes a shim (45). (Col. 5, line 51 through Col. 6, line 27.) Von Hofe fails to show the weak locations being recesses.

Becker shows weak locations being recesses having a bottom that can be perforated by a suitable tool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the weak locations of Von Hofe in recesses, such as those shown by Becker, because vacuum surfaces commonly include recesses so an adhered article can remain supported on raised ridges while vacuum is applied along the recesses.

As to claims 2 and 3, Figures 3 and 5 of Von Hofe show how the weak locations are regularly arranged over the entire applicator surface.

As to claim 4, Figure 6 of Von Hofe shows grooves extending to the applicator surface.

As to claims 6, 10, 13, and 15, Von Hofe includes an embodiment where an applicator pad (39) is coupled to the applicator surface of the shim (41). (See Figure 2.) Also included is a mounting frame (36) releasably connected to the applicator pad (39). The surface of the mounting frame includes perforated or weak locations (42) which correspond to the ones on the shim (41).

As to claim 16, it appears that the weak locations could be perforated by hand, such as using a hand drill, which would have a handle.

As to claim 17, the carrier plate of Von Hofe is releasably connected to the air suction force.

As to claims 18 and 26, the material used in Becker is plastic material, and plastic materials are known to be deformable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the applicator head

from a deformable material, such as plastic, because Becker shows this material to be effective and appropriate for a vacuum applicator head.

As to claims 19-20 and 28, the formation in Figures 3 and 5 of Von Hofe show a pattern of closely spaced dots that amounts to a raster grid with rows and columns.

As to claim 22, the applicator plate of Von Hofe includes an applicator surface in Van Hofe.

As to claim 23, the embodiment of Von Hofe with the carrier plate and applicator plate in Figure 2 includes a space in between.

As to claim 29, the applicator plate of Von Hofe is in combination with an applicator head.

As to claims 30-31, the method of making the applicator plate of Von Hofe comprises: providing an applicator plate having spaced perforatable weak areas; perforating only selected ones of the weak areas of the plate; and assembling the applicator plate onto a label applicator head.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe in view of Becker as applied to claims 1, 6, and 10 above, and further in view of Tiefel (US Patent No. 5,885,406).

While Von Hofe shows applicator pad with a mounting frame, there is no teaching in Von Hofe with respect to a locking device which includes a spring-loaded ball. It would have been obvious to one having ordinary skill in the art at the time the invention was made that such a locking device could be used in the device of the

references as combined, because, as shown in Tiefel, such a locking device is known in the art and within the purview of one of ordinary skill to use as needed.

Claims 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe in view of Becker as applied to claims 1 and 13 above, and further in view of Wood (US Patent No. 3,377,096) or Wilson et al. (US Patent No. 5,024,574).

Von Hofe discloses releasably attaching the applicator plate and the carrier plate. Alternatively the plates could be non-releasably fastened together as shown in both Wood and Wilson. It would have been obvious to one having ordinary skill in the art at the time the invention was made to non-releasably fasten plates together by means of glue, because Wood and Wilson show that it is well known to glue surfaces together which multiple plates are used in combination on a vacuum chuck. Using glue to adhere the plates together is a functionally equivalent alternative expedient of using fasteners, both being within the purview of the artisan.

(10) Response to Argument

Before addressing Appellant's arguments, the Examiner makes note of the fact that many of the claim limitations are directed to capability such as "*perforatable weak locations which can be selectively perforated.*" The French and Becker references and the other references used in the rejections show apparatuses with these capabilities.

Appellant argues that French fails to show an applicator surface having spaced perforatable weak locations which can be selectively perforated. As described in the

rejection above, French shows an applicator surface comprising both plates 67 and 115 with weak locations at recesses, 101. At these weak locations, only the thickness of plate 115 needs to be perforated to provide through holes. Some of these weak locations (at apertures 117) have been selectively perforated through the second plate 115 as shown in Fig. 5. The other areas of the applicator surface are the thickness of both plates 67 and 115, which would require a greater force to create through holes therein.

Regarding Appellant's argument against the rejection of claim 4, the recesses, 101, are considered to be grooves.

Regarding Appellant's argument against the rejection of claims 5, 19, and 20, the recesses in plate 67 are shown to be arranged in rows and columns (See Fig. 5).

Regarding Appellant's argument against the rejection of claim 23 in that plates 67 and 115 do not have a space therebetween, it is noted that the applicator pad of French is plate 31, which is spaced from the carrier plate, plates 67 and 115 (See Fig. 4).

Appellant also argues that Becker does not have weak locations but has two plates 14 and 16. Similar to the interpretation of French, the examiner has described Becker as showing an applicator surface comprising both plates 14 and 16 with weak locations comprising channels 18 in plate 16 which can be selectively perforated with apertures, 22, through the flat plate, 14. These channels are weaker than the ridge sections of the applicator surface which are two materials thick.

Regarding the argument that claim 13 was rejected as anticipated by Becker although parent claim 6 was not, the rejection of claims 13, 15, 18, and 26 as

anticipated by Becker was in error and has been rescinded. Claims 6, 13 and 15 have been rejected as being non-obvious over Von Hofe in view of Becker. The rejection of claims 18 and 26 have similarly been moved to be in accordance with the rejection of their parent claims.

Appellant's additional argument that Von Hofe in view of Becker does not show weakened areas, the examiner refers back to the argument over Becker alone above which shows channels, 18, in plate, 16, of the applicator surface which are the weak locations.

Regarding Appellant's argument against claim 12, the locking bolts of Von Hofe are abutment means as they create an abutment which prevents lateral movement of the applicator pad.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Mark A Osele/
Primary Examiner, Art Unit 1791

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Christopher A. Fiorilla/

Chris Fiorilla

Supervisory Patent Examiner, Art Unit 1700

Conferees:

/Christopher A. Fiorilla/

Chris Fiorilla

Supervisory Patent Examiner, Art Unit 1700

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791